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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARK J. MORALES,

CASE NO.99-CV-654 W (LSP)

12
13 Petitioner,

14 v.

ORDER DENYING
CERTIFICATE OF
APPEALABILITY

15 ROBERT AYERS, et al.,

16
17 Respondents.
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19 On April 10, 2007, the Ninth Circuit Court of Appeals remanded an appeal in
20 the case captioned Morales v. Ayers, Appeal No. 07-55355, for the limited purpose of
21 granting or denying a certificate of appealability. Petitioner Mark Morales attempted
22 to appeal this court's rejection of a motion for relief from judgment [Doc. No. 27] dated
23 February 23, 2007.

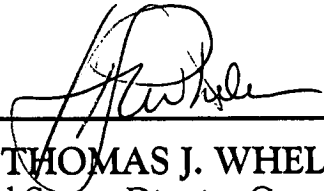
24 The court will **DENY** the certificate of appealability for two reasons. First,
25 Morales attempted to file a motion for relief from judgment in a closed case. Both this
26 court and the Ninth Circuit Court of Appeals denied certificates of appealability after
27 Morales attempted to appeal the court's dismissal of the habeas-corpus petition dated
28 November 3, 1999. As required by United States v. Asrar, 116 F.3d 1268 (9th Cir.

1 1997), this court issued a lengthy opinion [Doc. No. 24] denying the certificate of
2 appealability. In that opinion, this court explained that Morales missed the statute of
3 limitations to challenge his conviction under 28 U.S.C. § 2244(d)(1), and failed to
4 establish circumstances justifying equitable tolling. In turn, the Ninth Circuit Court of
5 Appeals denied a certificate of appealability in Appeal No. 00-55245 (9th Cir. July 21,
6 2000) (Nelson, J., and Silverman, J.). The case termed July 24, 2000. Now, seven years
7 later, Morales may not reopen his case to file a motion for relief from judgment.

8 Second, even if the court would have accepted the filing, Morales argued for
9 relief from judgment due to mistake and inadvertence. Under Federal Rule of Civil
10 Procedure 60(b), he needed to raise that argument within one year. Thus, Morales has
11 not made a "substantial showing of the denial of a constitutional right" as required for
12 a certificate of appealability. See 28 U.S.C. § 2253(c)(2). Consequently, the court
13 hereby **DENIES** the certificate of appealability.

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15 **IT IS SO ORDERED.**

16 **Dated: April 11, 2007**



17 **Hon. THOMAS J. WHELAN**
18 United States District Court
19 Southern District of California
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